



# Public Notice

<b>U.S. Army Corps</b>	Permit Application No: _____	23484
<b>Of Engineers</b>	Date Issued: _____	15 September 2004
<b>Galveston District</b>	Comments Due: _____	18 October 2004

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**U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT  
AND  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**PURPOSE OF PUBLIC NOTICE:** To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**AUTHORITY:** This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**APPLICANT:** Lyon Properties  
Town East Tower, Suite 525  
18601 LBJ Freeway  
Mesquite, Texas 75150-5362

**AGENT:** PBS&J  
1880 South Dairy Ashford Street, Suite 300  
Houston, Texas 77077-4746  
Telephone: 281-493-5100  
POC: Martin Heaney/Jim Gregory

**LOCATION:** The project is located in open water and wetlands adjacent to the Gulf Intracoastal Waterway (GIWW) at the northeast corner of the intersection of GIWW and SH 332 (Gaffney Drive north of SH 322) in Surfside, Brazoria County, Texas. The **project** can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 276614; Northing: 3205092. The **mitigation project** can be located on the U.S.G.S. quadrangle map entitled: Jones Creek, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 265719; Northing: 3202465.

**PROJECT DESCRIPTION:** The applicant proposes to place fill into 0.70 acres of wetlands and 0.27 acres of water during the construction of a marina on a 4.05-acre site in Surfside, Texas. The applicant also proposes to excavate 0.72 acres of wetlands and 0.89 acres of uplands and dredge 0.25 acres of adjacent waters during the construction of the marina. The applicant proposes the construction of a boat slip area capable of mooring 76 boats in individual slips within the harbor. The applicant also proposes to construct three mooring piers and a parking area with access to Gaffney Drive. The sheet labeled “Attachment B” in the plans describes the proposed facilities in detail. The placement area (PA) proposed for the placement of approximately 9,437 cubic yards of excess dredge material from the proposed marina excavation would be located on a 3-acre site approximately 4 miles from the proposed marina.

The PA is an existing concrete crushing and aggregate operation (Mike Sorrell Trucking and Materials, Inc.) and has been modified to require only 1 acre of placement as the excess material from excavating the marina will be heavy clay material. These soils can be stockpiled in the existing work yard of the concrete crushing operation. No wetlands exist in the proposed PA. Water from the PA will drain to the vacant pasture north of the work yard. Filter fabric fence and hay bale diversions may be used to aid in the diversion. In general, the pasture drains north through a vegetated man-made ditch into East Union Bayou and ultimately into the GIWW.

To compensate for impacts the applicant would enhance 7.2 acres and create 8.5 acres of palustrine emergent marsh on the Peach Point Wildlife Management Area. The proposed mitigation would involve the installation of two water control structures in an existing access road, a culvert within an access road to the north, and an earthen plug in an existing pipeline ditch to prevent the project from dewatering. The sheet labeled “Attachment E” provides additional details.

A jurisdictional delineation verification (D-15141) dated November 18, 2003, stated the project area contains 1.00 acre of open water of the GIWW and 1.34 acres of wetlands adjacent to the GIWW. The applicant’s plans are enclosed in 13 sheets.

**NOTES:** This public notice is being issued based on information furnished by the applicant. This information has not been verified.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the Clean Water Act (CWA).

**OTHER AGENCY AUTHORIZATIONS:** Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program.

This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those which result in a direct impact of three acres or less of waters of the state or 1500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices and other provisions designed to safeguard water quality. The U.S. Army Corps of Engineers (Corps) has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

**NATIONAL REGISTER OF HISTORIC PLACES:** The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

A historic properties investigation to assess the presence and condition of 41BO198 and 41BO176 was conducted by the staff archaeologist in 1991. At that time, both shrimp boats were recorded and deemed "not eligible" for the National Register of Historic Places, and were removed. There are no additional concerns about historic properties for the proposed project.

**THREATENED AND ENDANGERED SPECIES:** Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

**ESSENTIAL FISH HABITAT:** This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or Federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-330, the Regulatory Programs of the Corps of Engineers, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

**SOLICITATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps of Engineers may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

**PUBLIC HEARING:** Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues are substantial and should be considered in the permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before **18 October 2004**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

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Regulatory Branch, CESWG-PE-RE  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229  
409-766-3804 Phone  
409-766-3931 Fax

DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS